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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

JUN - 8 1995

In the Matter of)
)
Amendment of the Commission's)
Regulatory Policies Governing)
Domestic Fixed Satellites and)
Separate International Satellite)
Systems)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

IB Docket No. 95-41

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COMMENTS OF
ARTER & HADDEN

Arter & Hadden, on behalf of certain of its clients, submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding¹.

I. Introduction

Certain of Arter & Hadden's clients are very interested in providing direct broadcast satellite ("DBS") service to the U.S. domestic market. Some clients not only have completed their business plans, but have already contracted with satellite manufacturers and have completed the design of their satellites. These clients have the resources and talent to launch a DBS service to U.S. households within 2 years that would offer new and innovative programming delivered digitally for laser disc-quality picture and CD-quality sound, not just the retransmission of existing programming. They plan an open architecture for their DBS service that would provide all equipment manufacturers the same opportunity to compete in the provision of integrated receiver

¹ Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Notice of Proposed Rulemaking, IB Docket No. 95-41, FCC 95-146 (released April 25, 1995) (hereinafter "NPRM").

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decoders, uplink decoders, remote controls and mini-satellite dishes (15 to 24 inches in diameter). The launch of this new DBS offering, unfortunately, has been impeded by the lack of a geostationary orbit for new high powered satellites to serve the U.S. domestic market.

The important issues that will be considered by the Commission in this proceeding hold the promise of resolving the dilemma faced by these Arter & Hadden clients. Specifically, the Commission invited comment "on whether, and under what conditions, non-U.S. satellites should be permitted to serve the U.S. domestic market".²

A Commission policy eliminating barriers to the use of non-U.S. satellites to provide DBS to the U.S. domestic market is essential to ensuring strong competition for the high-powered DBS service and the additional competition to wired cable service designed by Congress when it passed the Cable Television Consumer Protection and Competition Act of 1992.³ Eliminating disparate treatment of non-U.S. satellites and U.S.-licensed satellites serving the U.S. domestic market should remove unwarranted barriers to new entrants in the U.S. domestic DBS market and advance the Commission's goals of creating greater diversity in the marketplace and offering American consumers a real choice of DBS service providers. A decision by the Commission here adopting a policy in favor of the use of non-U.S. satellites to provide DBS to the U.S.

² NPRM, ¶ 39.

³ Cable Television Consumer Protection and Competition Act of 1992, 106 Stat. 1460.

domestic market is also required before foreign countries will request the International Telecommunications Union ("ITU") to modify the DBS orbital locations that they were assigned so as to permit coverage of the U.S.

II. The Commission Should Eliminate U.S. Regulatory Restrictions On the Use of Non-U.S. Satellites to Provide DBS to the Domestic U.S. Market to Insure that All People of the U.S. Will Soon Enjoy the Benefits of Competition Among Multiple Multichannel Video Programming Distributors

Eliminating U.S. regulatory restrictions on the use of a non-U.S. satellite to provide DBS to the U.S. domestic market will make possible the advent of vigorous competition in the DBS industry and, indeed, in the broader video distribution market. As the Commission is well aware, there are currently no competitors to the DirecTV/USSB monopoly in the operation of high-powered DBS satellites. In the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, DirecTV and USSB are not described as competitive entities, but as joint DBS services.⁴ With respect to the status of competitors to the franchised cable TV systems, the Commission reported to Congress that "providers using alternative video programming distribution media have not yet reached the subscribership levels necessary for the Commission to conclude that vigorous rivalry currently exists in the market for multichannel video programming distribution."⁵

⁴ Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, First Report, 9 FCC Rcd 7442, 7474 (1994).

⁵ Id. at 7449.

The adoption of a Commission policy allowing the use of non-U.S. satellites to provide DBS to the U.S. domestic market would for the first time enable American consumers to choose between multiple DBS service providers. Such a Commission decision would infuse a significant amount of capital into the industry and hasten the delivery of high-powered DBS service to the public. This will, in turn, benefit American consumers by increasing service options, lowering prices, and facilitate the creation of a global information infrastructure.

In the NPRM, the Commission voiced its concern that eliminating the Commission's Transborder Policy and restrictions on separate U.S.-licensed international satellites is not likely to result in full competition because domestic fixed-satellites occupy orbital locations best suited for domestic service and separate system satellites occupy orbital locations best suited for international service.⁶ However, with approval from the ITU to expand the coverage contained in the DBS plan, high-powered satellites could be launched to DBS orbital locations assigned to foreign countries that are well suited for the provision of DBS service to the U.S. domestic market as well as to the relevant foreign market. Allowing the use of the same high powered non-U.S. satellites to provide DBS service to both the U.S. and neighboring foreign countries will achieve economies of scale, engineering efficiency, and ensure that the citizens of this country and

⁶ NPRM, ¶ 22.

neighboring countries reap the greatest benefits from satellite technology.

III. The Commission Has Full Jurisdiction to Consider Whether the Public Convenience and Necessity Would be Served by the Use of Non-U.S. Satellites to Provide DBS to the U.S. Domestic Market

The Commission has the authority to adopt a policy that allows the use of non-U.S. satellites to provide DBS to the U.S. domestic market. The Commission was established by Congress for "the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges".⁷ It is the policy of the United States "to encourage the provision of new technologies and services to the public"⁸.

The foundation of our country's satellite policy includes the concept of a global system through which communications can flow free of artificial constraints. It is the policy of the United States to cooperate with other countries in the establishment of satellite systems that will serve the communication needs of the United States and other countries and improve the global information infrastructure.⁹ The Commission has been directed by

⁷ Communications Act of 1934, 47 U.S.C. § 151.

⁸ 47 U.S.C. § 157.

⁹ The Communications Satellite Act of 1962, 47 U.S.C. § 701(a).

Congress to "insure effective competition" between communication satellite systems.¹⁰

A Commission decision that allows the use of non-U.S. satellites to provide DBS to the U.S. domestic market is, of course, subject to the international coordination obligations of the United States and the foreign country that is expanding the coverage of its assigned DBS orbital location.¹¹ DBS orbital locations were assigned internationally to various countries through a plan adopted at the 1983 Regional Administrative Radio Conference. The plan is contained in Appendix 30 of the ITU Radio Regulations. It is an a priori plan setting forth general principles to which a certain degree of flexibility is provided. Interim systems may be implemented with characteristics that deviate from those contained in the plan.

Before a non-U.S. satellite could be used to provide DBS to the U.S. domestic market, the relevant foreign country would need to propose a modification to the plan so as to include the U.S. within the coverage of the orbital location assigned to that foreign country. Procedures for modifications to the plan are contained in Article 4 of Appendices 30 and 30A of the ITU Radio Regulations. After receiving such a proposal, the ITU Radiocommunication Bureau will evaluate the impact of the proposed

¹⁰ 47 U.S.C. § 721(c).

¹¹ However, consultation pursuant to the INTELSAT Agreements should be unnecessary because the INTELSAT international consultation procedures apply on to fixed-satellite services and not to the broadcasting satellite service.

modification to the plan on a reference situation for the inter-system levels regarding all plan entries. The adoption of a Commission policy eliminating U.S. regulatory restrictions on the use of a non-U.S. satellite to provide DBS to the U.S. domestic market would facilitate the international coordination and plan modifications needed to provide the American public the benefits of competition from such new sources of video programming.

IV. Conclusion

Certain of Arter & Hadden's clients have worked diligently to launch a competitive DBS service to the U.S. domestic market utilizing advanced digital compression technology that would dramatically increase the number of television channels that can be transmitted, thereby giving the American public access to an unprecedented array of interactive entertainment and information services featuring improved picture quality, CD-quality audio, multiple data applications, and broad interoperability with other services and devices (e.g., multiple audio signals, synchronous and asynchronous data, subtitles and other text). Unfortunately, the implementation of these business plans has been thwarted by the lack of a DBS orbital slot from which high-powered satellites could provide this DBS service to the U.S. domestic market. Therefore, Arter & Hadden, on behalf of these clients, urges the Commission in this rulemaking proceeding to adopt a policy that allows the use of non-U.S. satellites to provide DBS to the U.S. domestic market, conditional upon receiving the ITU's approval of any necessary changes to the DBS plan and licenses from the associated foreign

government assigned those DBS orbital locations. The adoption of such a public policy is critical to developing a robust competitive market for DBS services offering the American public and consumers in neighboring countries an unprecedented variety of new, high-quality video programming that is more interactive and less expensive than the single high-powered service now available, that jointly provided by DirecTV and USSB.

Respectfully submitted,

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